IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 320 of 2005

KESHA RAM
V/S
SAROJ & ANR

Mr. SHAMBHOO SINGH, for the appellant / petitioner

Mr. BK BHATNAGAR, for the respondent

Date of Order : 21.3.2005

HON'BLE N P GUPTA,J.

ORDER

Heard learned counsel for the parties present.

By the impugned order, the learned trial court (M.A.C.T.) has directed that out of awarded amount, a sum of Rs. 85,000/- be given to the widow of the deceased Smt. Saroj.

The peculiar facts & circumstances of the case are, that for the death of one Khet Singh, who died on 4.3.2000, a claim petition was filed by the parents on 29.7.2000, being claim case no.59/2000, without disclosing the factum of deceased having left any widow, and in that claim, on 13.3.2002, a compromise was arrived at through Lok Adalat, and accordingly an award of Rs. 1,00,000/- was passed. What is significant to note is, that, in that compromise award, it was specifically stipulated, that if it is found that deceased has left the widow, and if she files any claim, then it will be the responsibility of the present claimants, (parents), to satisfy her claim. It is on 29.4.2002 itself, that widow Smt. Saroj filed an application, copy whereof has been filed with this appeal as Annex.2, alleging that she was married with Khet singh on 24.4.92, and claim has been filed only by parents of the deceased, wherein award has been passed, amount whereof has not been deposited with the court so far, and the applicant is the widow, being first class heir, is entitled to get that amount.

Only stand taken in reply to this application was, that award has been passed on 13.3.2002, pursuant whereto cheque has been deposited in the name of Kesa Ram (father of Khet Singh), while Smt. Saroj, who has

filed the application for making payment to her, is not the party to the claim, while award has been passed in favour of the claimants, (parents) only, and Smt. Saroj has remarried with one Dashrath, and from that wedlock, a son has been born and, therefore, Smt. Saroj is not entitled to any amount of compensation.

It is significant to note that, in the compromise arrived at on 13.3.2002, it was not mentioned, that deceased should, not only have left the widow, but she should have continued to remain widow only. In this back-ground, significantly in para no.3 of the reply, it was nowhere the stand, that Saroj is not the married wife of Khet Singh, or that in view of stipulation contained in compromise, Smt. Saroj is not entitled to receive anything, rather a different stand has been taken, that she has re-married. In this back ground, the evidence which has been led, consisting of Kesa Ram and other witnesses, is only to the effect that Smt. Saroj had gone away to parents' house just 4-5 days after the death, and had remarried after 2-3 months itself. This admission of Kesa Ram, does clearly show, that as on the date of getting compromise award on 13.3.2002, he and parents were very much aware of the fact, that deceased has left the widow, and also the fact that she had remarried. Notwithstanding this, in the compromise, the stipulation incorporated was only, regarding it being found, that deceased has left any widow. Thus, in this sequence, the learned Tribunal in the impugned order, filed as Annex.10 dt. 19.11.2003, has appreciated the evidence, and found that Smt. Saroj had filed separate claim for compensation in respect of death of Khet Singh, and that claim was disposed of on 11.6.2003, by observing that two awards cannot be passed for compensation in respect of one death. It was also noticed that claim of Smt. Saroj remained pending for very long time. It was then found, that much before passing of compromise award, one of the claimants Shanti Devi, mother of deceased, had already died, and notwithstanding this, the claim had survived, and award happened to be passed in her favour as well. Then it was noticed, that it is not in dispute, that Smt. Saroj is the duly wedded wife of Khet singh, and

that, in the claim, filed by parents, Smt. Saroj was not impleaded as party, and compromise was arrived at through Lok Adalat, after the death of Shanti Devi, and in the claim petition, factum of Smt. Saroj, being the wife of Khet singh, was not disclosed, and this fact appears to have been come on surface at the time of compromise, therefore, while passing the compromise award, this stipulation was incorporated. With this, the learned tribunal has held that, award passed on 13.3.2002, cannot be said to be void, on account of death of Shanti Devi. As claim could be continued by Kesa Ram, then regarding entitlement of Smt. Saroj, it was held in para no.14, that claimants had filed the claim, suppressing the factum of deceased having the widow Smt. Saroj, and the award dated 13.3.2002 was passed conditionally. Then in para no.16, it was noticed, that even if, she is found to have remarried, still she cannot be deprived of right of compensation. Thus with these findings, the impugned order has been passed.

In my view, apart from the fact, that it is not the disputed proposition, that even despite remarriage, widow is entitled to compensation, on account of death of husband in the accident, much was sought to be argued, on the proposition, that the portion of the amount given to Smt. Saroj is excessive, and only just compensation should have been awarded to her. I have not been able to persuade myself to accept the contention, specially looking to the conduct of claimant, in filing the claim petition, deliberately suppressing the existence of widow of the deceased, being Smt. Saroj, at the time of filing of claim petition, and clandestinely obtaining the compromise award, by simply incorporating the stipulation, that if it is found that deceased had left the wife, then they would satisfy her claim, while as a matter of fact, as appears from his own statement, recorded in this regard, and produced as Annex.5, it was very well within his knowledge, that deceased had left the widow Smt. Saroj. It is a different story that this aspect was not argued before the learned Tribunal, in which event, this court would have had the advantage of the opinion of the learned

Tribunal for ordering this apportionment.

Learned counsel for the appellant was pointedly asked, as to when was the claim filed by Smt. Saroj, but he has expressed his inability. However, looking to the sequence of events, as transpire, i.e. that award was passed on 13.3.2002, and the application was filed by Smt. Saroj on 29.4.2002 itself, I am left to conjecture, that as on 13.3.2002 itself, claim filed by Smt. Saroj must have been pending, and that some how prolonged, and was disposed of on 11.6.2003 only. Looking to this conduct, and over all material on record, I am satisfied with the apportionment of the compensation made by learned Tribunal.

The appeal, thus has no force, and hereby dismissed summarily.

(N P GUPTA),J.

/Srawat/